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20551 7590 11/16/2009 THORPE NORTH & WESTERN, LLP. P.O. Box 1219 SANDY, UT 84091-1219				
EXAMINER				
FIELDS, BENJAMIN S				
ART UNIT		PAPER NUMBER		
3684				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/786,706

Applicant(s)

SWENSON ET AL.

Examiner

BENJAMIN S. FIELDS

Art Unit

3684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9 and 11-21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Introduction

1. The following is a **FINAL** Office Action in response to the communication received on 6 July 2009. Claims 1-9 and 11-21 are now pending in this application.

Response to Amendments

2. The Examiner acknowledges the Applicants remarks and amendments in response to the originally asserted 35 U.S.C. 101 Rejection of Claims 1-18 and 21, however, the Examiner maintains the rejection in view of the comments mentioned below.

3. Applicants Amendments to Claims 1-21 has been acknowledged in that: **Claims 1-3, 8-9, 11-13, 15-17, and 19-21 have been newly amended; Claim 10 has been newly cancelled; NO Claims have been newly added;** hence, as such, **Claims 1-9 and 11-21 are pending in this application.**

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims **1-9, 11-18** and **20-21** are rejected under 35 U.S.C. 101 because the claimed invention is not directed to a secondary statutory subject matter/class.

A claimed process is eligible for patent protection under 35 U.S.C. § 101 if:

"(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See Benson, 409 U.S. at

70 ('Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines. '); Diehr, 450 U.S. at 192 (holding that use of mathematical formula in process 'transforming or reducing an article to a different state or thing' constitutes patent-eligible subject matter); see also Flook, 437 U.S. at 589 n.9 ('An argument can be made [that the Supreme] Court has only recognized a process as within the statutory definition when it either was tied to a particular apparatus or operated to change materials to a 'different state or thing' '); Cochrane v. Deener, 94 U.S. 780, 788 (1876) ('A process is...an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.').⁷ A claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed. And a claimed process that transforms a particular article to a specified different state or thing by applying a fundamental principle would not pre-empt the use of the principle to transform any other article, to transform the same article but in a manner not covered by the claim, or to do anything other than transform the specified article." (*In re Bilski*, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008))

As noted in *Bilski*: "[A] Process claim that recites fundamental principle, and that otherwise fails 'machine-or-transformation' test for whether such claim is drawn to patentable subject matter under 35 U.S.C. §101, is not rendered patent eligible by mere field-of-use limitations; another corollary to machine-or-transformation test is that recitation of specific machine or particular transformation of specific article does not transform unpatentable principle into patentable process if recited machine or transformation constitutes mere 'insignificant post-solution activity.'" (*In re Bilski*, 88 USPQ2d 1385, 1385 (Fed. Cir. 2008)) Examples of insignificant post-solution activity include data gathering and outputting. Furthermore, the machine or transformation must impose meaningful limits on the scope of the method claims in order to pass the machine-or-transformation test. Please refer to the USPTO's "Guidance for Examining Process Claims in view of *In re Bilski*" memorandum dated January 7, 2009, http://www.uspto.gov/web/offices/pac/dapp/opla/documents/bilski_guidance_memo.pdf .

Point of Importance: It is also noted that the mere recitation of a machine in the preamble in a manner such that the machine fails to patentably limit the scope of the claim does not make the claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals Informative Opinion *Ex parte Langemyr et al.* (Appeal 2008-1495), <http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf>.

Furthermore, Claims 1-9, 11-18 and 20-21 are not directed toward statutory subject matter. The claims are directed toward a charitable cause, movement, or expression which incites feelings within individuals. Gathering flags is the only functionality that is positively recited.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1-9 and 11-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Referring to Claims 1-9 and 11-21: Claims 1-9 and 11-21 as amended recite and seemingly represent actions which can not effectively be claimed. In particular, focus

on: " ... a campaign *designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response.*"

The Examiner notes that such limitations per Applicants disclosure do not reasonably enable one skilled in the art to make and use the invention of the instant application. One of ordinary skill in the art would not have known how to consistently arrange flags to "stimulate an emotional response" or "heighten [an] emotional response" with fairly consistent tests/trials or results and without undue experimentation and/or guesswork. Furthermore, there is no definitive guarantee that such goal or attempt to "stimulate an emotional response" or "heighten [an] emotional response" will actually occur.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-9 and 11-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to Claims 1-9 and 11-21: Claims 1-9 and 11-21 recite: " ... a campaign *designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response.*"

The Examiner notes that such limitations per Applicants require further additional clarification. How is it that an individual, machine, or even a process be able to arrange flags in order to “stimulate an emotional response” while at the same time “heighten [an] emotional response” as well? Further, how is it that an individual, machine, or even a process be able to “designed to educate” as set forth in the claims of the instant application?

Appropriate correction is required.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-9 and 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Exhibit U in view of Harmon et al. (US PG Pub. No. 2004/0181468), [hereinafter Harmon].

Evidence of public use and knowledge of the invention prior to Applicant's earliest priority date of 6 February 2004 is provided as follows:

EXHIBIT	DESCRIPTION
U	FREEDOM FIELD <URL: http://www.bright.net > [online],

	March 2001 [retrieved on 2005-04-11]. Retrieved from the Internet:
	<URL: http://www.archive.org >

This evidence, taken as a whole, shows that the invention, as claimed, was both in “public use” and “knowledgeable” prior to 6 February 2004.

Referring to Claim 1: Exhibit U teaches a method for raising funds for a charitable cause comprising the steps of: identifying a charitable cause in need of funding (Exhibit U: Pages 1-2//The need for funding here is represented by assisting troops across the country//); transforming a selected location by erecting the plurality of flags at the selected location to comprise a healing field that is, at least in part, expressive of the charitable cause (Exhibit U: Pages 1-2, 5); linking a display of the healing field to the charitable cause in need of funding by carrying out a public awareness campaign designed to educate others about the charitable cause and its relation to the healing field (Exhibit U: Pages 1-2); displaying the healing field as part of the public awareness campaign, the plurality of flags being arranged as a group in a layout so as to stimulate an emotional response within individuals viewing the healing field that is associated with the charitable cause (Exhibit U: Pages 1-2); selling at least some of the plurality of flags

that are displayed in the healing field and donating proceeds to raise additional funds for the charitable cause in need of funding (Exhibit U: Pages 1-2, 4-5).

Exhibit U, however, does not expressly discuss obtaining one or more sponsors to fund the charitable cause through paying for a plurality of prior to their display, with at least a portion of proceeds being donated to the charitable cause; removing the plurality of flags after a predetermined display period to eliminate the healing field from the location.

Harmon, in a similar environment, shows multiple fund raising events (a healing field is an example of such) temporarily occupying a location (for a period of time) not dedicated to providing a permanent display (Harmon: Page 1, Paragraphs 0004-0008); obtaining one or more sponsors to fund the charitable cause through paying for a plurality of prior to their display, with at least a portion of proceeds being donated to the charitable cause (Harmon: Figure 2; Page 1, Paragraphs 0004-0008; Claims 1-3). Regarding removing the plurality of flags after a predetermined display period to eliminate the healing field from the location, the Examiner notes that this would obviously take place if the healing field even were held at certain times of the year or at certain locations, etc.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Exhibit U with the features causing the charity fund raising event to be periodic/temporary and allowing at least a portion of proceeds to go to the charitable cause in need of funding for the purpose of further inhibiting charitable

giving and create better manners to solicit funds for charitable causes/events (Harmon: Page 1, Paragraphs 0002-0008).

Referring to Claim 2: Exhibit U discloses a method, wherein the step of providing a plurality of flags to comprise a healing field further comprises the step of identifying a historical event to be symbolized by the plurality of flags (Exhibit U: Pages 1-2//The 'historical event' mentioned is the support which will be provided by assisting in this effort//).

Referring to Claim 3: Exhibit U shows a method, wherein the step of displaying the healing field further comprises the step of positioning the plurality of flags in a predetermined pattern (Exhibit U: Pages 1-2, 5//Exhibit U refers to a predetermined pattern in which flags can be placed-The reference discloses plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star//).

Referring to Claim 4: Exhibit U discloses a method, wherein the predetermined pattern could be that of a geometric nature (Exhibit U: Pages 1-2, 5//The reference discloses plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star//).

Referring to Claim 5: Exhibit U teaches a method, wherein the predetermined pattern could be that of a linear array placed along an area selected from the group

consisting of a path, a body of water, a river, a building, a structure, a road, a highway, a trail, a hill, a mountain, and a military base (Exhibit U: Pages 1-2, 5).

Referring to Claim 6: Exhibit U discloses a method further comprising the step of incorporating information within the predetermined pattern (Exhibit U: Pages 1-2, 5).

Referring to Claim 7: Exhibit U shows a method, further comprising the step of incorporating a graphic message within the predetermined pattern (Exhibit U: Pages 1-2, 5).

Referring to Claim 8: Exhibit U discloses a method, wherein the step of linking a display of the healing field to the charitable cause further comprises the step of advertising a purpose for the plurality of flags and the healing field, wherein the purpose links the plurality of flags and the healing field to the charitable cause (Exhibit U: Pages 1-2, 4-5//The website disclosed herein serves as a means of advertisement for such a charitable cause//).

Referring to Claim 9: Exhibit U in view of Harmon teaches the limitations of Claim 1.

Exhibit U in view of Harmon, however, does not expressly discuss a method, wherein the step of advertising the purpose for the plurality of flags and the healing field further comprises the step of advertising through a medium selected from the group consisting of radio stations, television stations, newspapers, magazines.

The Examiner notes that advertising via the means selected from the group consisting of radio stations, television stations, newspapers, magazines are common, old, and well known in the art. Exhibit U itself shows internet advertising and in some

respect features either radio and television, advertising (See the message from Commander-in-Chief mention). Therefore, it would be obvious to utilize, in addition to the present website, additional avenues of promoting (i.e. radio stations, television stations, newspapers, magazines) the healing field fundraising event.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method and system of Exhibit U for a flag healing field fundraising event with an even greater ability to promote this fundraising event via radio stations, television stations, newspapers, and/or magazines for the purpose of enabling a vast majority of people to support such a charitable cause (Exhibit U: Pages 4-5).

Referring to Claim 11: Exhibit U shows a method, wherein the one or more sponsors comprises a person that pays to sponsor one or more flags in the plurality of flags (Exhibit U: Pages 1-2, 4-5//The sites allow an individual, company, and/or organization to sponsor the fundraising event//).

Referring to Claim 12: Claim 12 parallels the limitations of Claim 11. As such, Claim 12 is rejected under the same basis as is Claim 11 as mentioned supra.

Referring to Claim 13: Exhibit U teaches a method, wherein the step of selling the plurality of flags further comprises the step of selling the plurality of flags through an auction (Exhibit U: Pages 4-5//The site composes an auction type feature/functionality which allows sponsorship of the fundraising event in that a bid or purchase price has been established and agreed upon once the healing field goes into effect//).

Referring to Claim 14: Exhibit U discloses a method, wherein the auction is an internet auction (Exhibit U: Pages 4-5//The site is accessible via the internet//).

Referring to Claim 15: Exhibit U shows a method, wherein the step of selling the plurality of flags further comprises the step of selling the plurality of flags through an advertising campaign (Exhibit U: Pages 1-2, 4-5//The site is an advertising campaign//).

Referring to Claim 16: Exhibit U discloses a method, wherein the step of selling the plurality of flags further comprises the step of placing advertisements near the healing field (Exhibit U: Pages 1-2, 4-5//The usage of the site is the main avenue for sales for the fundraising campaign, however, additional sponsorship near the healing field assists in helping to accomplish the fundraising goal//).

Referring to Claim 17: Claim 17 reflects the limitations of Claim 9. As such, Claim 17 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 18: Claim 18 parallels the limitations of Claim 9. As such, Claim 18 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 19: Claim 19 is the system for the method of Claim 1. As such, Claim 19 is rejected under the same basis as is Claim 1 as mentioned supra.

Referring to Claim 20: Claim 20 reflects the limitations of Claim 1. As such, Claim 20 is rejected under the same basis as is Claim 1 as mentioned supra.

Referring to Claim 21: Claim 21 parallels the limitations of Claim 1. As such, Claim 21 is rejected under the same basis as is Claim 1 as mentioned supra.

Response to Arguments

12. Applicants arguments filed 6 July 2009 have been fully considered but have been found to be **moot** and **non-persuasive**, both in view of the new grounds of rejection

mentioned supra as well as the Examiner's comments which follow. The Applicants argue:

Argument

Claim Rejections - 35 U.S.C. § 103

Claims 1-21 (including independent claims 1, 19 and 21) were rejected under 35 U.S.C. § 103 as being unpatentable over Exhibit U in view of Harmon et al. (U.S. Pub. No. 2004/0181468), hereinafter "Harmon". The Exhibit U and Harmon references, when combined, do not teach or suggest all of the elements of independent claim 1, as amended. Specifically, the Exhibit U reference does not teach that a sponsor initially pays for flags to be displayed in the field, followed by selling the flags displayed in the field to raise additional funds for the selected charity, and the Harmon reference does not overcome that deficiency. The Exhibit U reference discloses a planned 30 acre national park and museum dedicated to the honor of the U.S. flag. (See page 1). The reference discloses plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star. However, Exhibit U does not teach or suggest a sponsor that initially pays for flags to be displayed in a field, followed by selling the flags displayed in the field to raise additional funds. Indeed, there is no discussion in Exhibit U about selling flags or other objects that were previously purchased through donations from sponsors. Any income raised for charitable causes disclosed in Exhibit U is limited to donations made for permanent displays at the proposed field of honor. In contrast to the teachings of Exhibit U, claim 1 of the present application recites, in part, the operation of obtaining one or more sponsors to fund the charitable cause by paying for a plurality of flags. At least some of the plurality of flags that are displayed in the healing field are sold to raise additional funds for the charitable cause in need of funding. This provides additional fund raising ability for a charity than the traditional method disclosed in Exhibit U. In addition, by

selling the flags to additional donors when the display period of the healing field is completed, the public awareness of the charitable cause is further spread. Flags are often used to commemorate emotional events because they promote an emotional response in people. Once the healing field has been taken down, the flags can be displayed at numerous locations by different purchasers, enabling public attention to the charitable cause to be furthered even after the healing field is taken down. Thus, the present method can be used both to increase the profits that can be donated to the charitable cause, as well as increasing the public attention to the charitable cause. (See specification, page 5, lines 4-10). Harmon discloses a method of funding a charity in which an item associated with a charity is sold at a first price to a first buyer, and then resold at an increased price to a second buyer, with portions of each sale donated to the charity. Harmon gives several examples of tickets to concerts or sporting events that may increase in price due to supply and demand. For example, a popular rock concert may have more demand than supply. (See Harmon, ¶ [0028]). This can create a condition in which the ticket may be purchased and resold at an increased cost. (See Harmon, ¶ [0031]). However, the method disclosed in Harmon is limited to atypical market conditions in which the demand significantly outstrips supply for a selected item. In many types of charitable causes, such as cancer, chronic illnesses, veterans associations, military tributes, and so forth, the law of supply and demand do not create a condition in which an item can continue to be sold at an increasing cost. In contrast to the teachings of Harmon, in the present application, as recited in claim 1, an object is not sold to a first buyer, with the option to resell to a second buyer at a higher price. Rather, claim 1 provides that one or more sponsors are used to fund the charitable cause by paying for a plurality of flags prior to their display. The sponsors do not own the flags, with the ability to resell them at a higher price to make money for themselves or others. Rather, the sponsors make the field of flags display possible by paying for the flags prior to their display. In many fundraising situations, charities cannot afford to purchase hundreds, or thousands of flags for display in a healing field. The sponsor donations make it possible to display the flags at a selected location. Claim 1 of the present invention further recites that the flags are arranged in the healing field as a

group in a layout that stimulates an emotional response with individuals viewing the healing field that is associated with the charitable cause. The stimulation of the emotional response provides a value to the flags. Those viewing the healing field, that are so moved by the healing field display, can purchase a flag in the display to remind them of the charitable cause associated with the healing field. As previously discussed, this enables additional funding to be provided to the charitable cause. In addition, it enables the charitable cause to be displayed by numerous purchasers over a wide range of locations after the healing field has been taken down. The price at which the flags in the healing field display are sold may not necessarily be for more than the funds donated by the sponsors purchasing the flags. However, the additional money raised by selling the flags in the display is beneficial to the charitable cause. Thus, the teachings in Harmon of reselling an item for a greater price cannot be attributed to the present invention, as recited in claim 1. Moreover, the teachings of Exhibit U and the Harmon reference cannot be combined. As previously discussed, Harmon discloses a 30 acre national park and museum dedicated to honor the U.S. flag. The public can support the project by purchasing bricks for \$50.00 that will be displayed in the park. (See Exhibit U, page 4). The person's name and hometown or state will be printed on their brick. Of course, once a person's personal information is printed on a brick, the ability to resell the brick to another is minimal. The value of the brick to others will fall to near zero, since others can purchase bricks with their own personal information displayed. Thus, the fund raising method disclosed in Harmon cannot be applied to the teachings of Exhibit U. In contrast to the cited art, the present application, as recited in claim 1, provides a method for raising funds for a charitable cause. Sponsors can pay for a plurality of flags prior to their display. A selected location can then be transformed to display the plurality of flags that are grouped in a layout that stimulates an emotional response. This emotional response can encourage those viewing the healing field to purchase a flag, thereby furthering the charitable cause both financially and through additional publicity after the display is taken down. Neither Exhibit U, nor the Harmon reference, teach or suggest the limitations cited in independent claim 1. Independent claims 19 and 21 have been similarly amended. Therefore, Applicant respectfully

submits that independent claims 1, 19 and 21 are allowable, and urges the Examiner to withdraw the rejection.

Regarding Argument

The Examiner respectfully disagrees. First off the Examiner has not made or issued a 35 U.S.C. 102 (b) rejection in the last office action response (mail date: 3 February 2009). As stated by Applicants, the healing field *may* provide some type of visible outward expression of the charitable cause. For example, this may be in the type of flags used, the particular arrangement or pattern in which the flags are positioned, etc. The Applicants go on to further mention that Harmon further states that "the function of funding a charity or a group of charities is ancillary to the primary function of trading items ..." Therefore, Harmon does teach and suggest the funding of a charity or a group of charities.

The Exhibit U and Harmon references, at least, when combined, teach or suggest all of the elements of independent claim 1, even as amended. Specifically, the Exhibit U in combination with the Harmon reference does teach that a sponsor (buyers/sellers) initially pays for an item [flag] followed by selling the item to raise additional funds for a selected charity. The Exhibit U reference discloses a planned 30 acre national park and museum dedicated to the honor of the U.S. flag. (See page 1). The reference discloses plans for a "Field of Honor" containing over one-hundred granite memorial markers, as well as a "Flags of Freedom Monument" containing state and colonial flags located around 5 pools forming the shape of a star. Harmon, however, does teach or suggest a sponsor that initially pays for a charitable event prior to its commencement, with at least a portion of proceeds being donated to the

charitable cause (Harmon: Figure 2; Page 1, Paragraphs 0004-0008; Claims 1-3). Per Applicants: "The price at which the flags in the healing field display are sold ***may not necessarily*** be for more than the funds donated by the sponsors purchasing the flags. However, the additional money raised by selling the flags in the display is beneficial to the charitable cause."

Harmon allows for an option embodiment where the reselling of an item can be for a greater price and thus can be attributed to the present invention, as recited in claim 1. Furthermore, the Examiner notes that the methods steps which have been most newly amended represent actions which can not be effectively claimed. In particular, a campaign *designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response*.

As such, the Examiner maintains the rejection.

13. The arguments as filed 6 July 2009 have been fully considered but have been found to be **moot** and **non-persuasive**. As the remaining claims depend directly or indirectly from the independent claims mentioned/discusses above, the Examiner maintains all previously asserted rejections.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Exhibit V: Healing Field - An article which teaches a charitable healing field event which took place in Utah.

Exhibit W: Perpetual Fundraising System - A system that shows people how to create and maintain a charitable event relating to healing fields.

Applicants amendment necessitated the new grounds of rejection presented herein. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to BENJAMIN S. FIELDS at telephone number 571.272.9734. The examiner can normally be reached **MONDAY THRU FRI** between the hours of **9AM and 7PM**. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KAMBIZ ABDI can be reached at 571.272.6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3684

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin S. Fields

5 November 2009

/Susanna M. Diaz/

Primary Examiner, Art Unit 3684